IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15454 of 2006

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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V.H.B.LIFE SCIENCES INCORPROATION-THROUGH - Petitioner(s)
Versus
STATE OF GUJARAT THR' SECRETARY & 1 - Respondent(s)

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Appearance :
HL PATEL ADVOCATES for Petitioner(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2,

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 31/07/2006

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

1. Heard Shri Asim Pandya for the petitioner and learned Government Pleader Shri Sunit Shah appearing with learned AGP Mr. A.J.Desai for the respondents on the advance copy of this petition being served on them.

2. The petitioner-V.H.B.Life Sciences Incorporation who claims to be in the field of selling drugs since last 60 years has challenged in this petition the impugned decision dated 8th May 2006 taken by the respondent no.2-The Director, Central Medical Stores Organization, Aushadh Bhandar Bhawan, Gandhinagar, blacklisting the petitioner and its all the three partners and debarring them from the business relations for Health and Family Welfare Department and all hospitals/dispensaries under the Health and Family Welfare Department of the State of Gujarat for a period of five years.

3. The learned Counsel Shri Asim Pandya appearing for the petitioner-firm raised the following submissions:-

(i)The impugned order at Annexure 'A' dated 8-5-2006 blacklisting the petitioner-firm and its partners for a period of five years is not a speaking order inasmuch as without issuing any reason whatsoever, the respondent no.2 blacklisted the petitioner firm and its all the three partners.

(ii)It was a first lapse on the part of the petitioner-firm and such mistake or lapse or even a deliberate action on the part of the petitioner-firm should not have been visited with such a penalty of blacklisting for a period of five years in view of the excellent past 60 years record of the petitioner-firm and its charitable activities for the last several years.

(iii)He submitted that in any case the

penalty of blacklisting, and that too, for a period of 5 years was highly disproportionate, therefore, the Court should interfere and exercise its extraordinary writ jurisdiction under Article 226 of the Constitution.

4. Before appreciating the aforesaid submissions made by Mr. Pandya for the petitioner, few relevant facts are required to be stated which are as under:

4.1 Initially, the firm was running in the name of V.H.Bhagat & Co since 1946. The name of the firm was changed from V.H.Bhagat & Co. to V.H.B. Life Sciences Incorporation from the year 2003 for the marketing and commercial considerations as stated in the petition. The petitioner-firm was engaged in the business of trading, manufacturing and supply of **life saving drugs to the various Governments, hospitals, departments and to Defence Ministry.** It is the case of the petitioner-firm that for a period of last 60 years, it has never been visited with any adverse remarks or such type of penalty either by the Government or by the Semi Government Institutions or

even by private parties. Thus, the petitioner claims to have very good reputation in the business of supply of life saving drugs all over India. The petitioner also claims to be a charitable firm donating generously life saving drugs at the time of natural calamities like “Tsunami” wherein they have donated about Rs.1 crore worth of life saving drugs to Tamilnadu Government, and at the time of “Plague” broke out in Surat it has supplied 20,000 capsules for distribution to the affected families, and also supplied 10,000 capsules of Tetracyclin I.P.250 mg. to Tata Memorial Hospital. During earthquake of 1993 in the State of Maharashtra, it has donated essential drugs for the treatment of the victims affected by the earthquake.

5. In the aforesaid background of the petitioner which was sought to be glorified by the petitioner itself, it is now worthwhile to consider the aforesaid submissions of Mr. Pandya for the petitioner.

6. While considering his submissions, we must bear

in mind the fact that the Director, Central Medical Stores Organization-respondent no.2 had floated tender inquiry no.CMSO/D-366/RC/04-05 **for the supply of anti rabies vaccine.** The technical bid was to be opened on 11-3-2005. The petitioner also applied and its tender was found " L-1 ", however, at that time the respondent no.2 decided to re-invite tender for the said drugs of anti rabies vaccine, and accordingly, fresh tenders were floated in July, 2005. The terms and conditions of fresh tenders are at Annexure 'C'. One of the important terms and conditions of the tender was to have valid import licence.. An inquiry was made by the respondent no.2 regarding the genuineness of the import licence submitted by the petitioner-firm and it was found that the said licence was not genuine but it was in respect of some other drug. Therefore, at the first instance, the respondent no.2 issued show cause notice dated 4th October, 2005 to the petitioner (Annexure 'D') calling upon the petitioner to show cause as to why it should not be debarred/blacklisted for future tender for the period deemed fit under the terms and conditions of the tender. The said notice

was replied on 13th October, 2005 (Annexure 'E') by the petitioner wherein the petitioner had admitted that some of its employees had manipulated the import licence of a particular drug with some ulterior motive and sent it along with the tender documents. Therefore, the services of the concerned employee was terminated and the liasoner M/s. Mehta Trading Company was also terminated from liasoning. Considering the reply of the petitioner, the respondent no.2 by an order dated 8-5-2006 blacklisted the petitioner-firm and its all the three partners for a period of five years on the ground that copy of import licence no.SV-11-4000 dated 28-4-2004 issued by the Drugs Controller General of India was found to be fake and fabricated as the Drugs Controller General of India had never issued such licence.

7. From the aforesaid facts stated hereinabove, it is clear that admittedly, the petitioner-firm had sent fake and fabricated licence. It is a different matter that having been caught and found guilty, the petitioner-firm tried to throw the burden on its

employees. Such a serious lapse on the part of the petitioner cannot be condoned.

8. From what has been stated above, it is clear that though the impugned decision dated 8-5-2006 Annexure A' of blacklisting taken by the respondent no.2 is a brief one, but it clearly gives a solid reason for blacklisting the firm and its all the three partners. Therefore, it cannot be said that it was not a reasoned order of blacklisting . Hence, first submission of Mr. Pandya fails, and is hereby rejected.

9. When such a serious lapse is found to be proved on the part of the petitioner-firm, then its past record of 60 years and its so called charitable activity loses its significance. In the instant case, tenders were floated for the supply of life saving drugs like anti rabies vaccine. If the petitioner indulges in producing fake and fabricated import licence in its favour from the highest authority of India, it creates serious doubt about the petitioner's intentions. Considering the peculiar

facts and circumstances of the case, in our considered opinion, no other appropriate order could have been passed by the respondent no.2. Therefore, the order of penalty of blacklisting the petitioner-firm and its all the three partners for a period of five years cannot be said to be highly disproportionate. It is to be borne in mind that this Court is exercising its extraordinary jurisdiction under Article 226 of the Constitution and not sitting in appeal over the impugned decision taken by the respondent no.2 blacklisting the petitioner and its all the three partners. Unless it is pointed out that the decision is on the face of it perverse or unreasonable, this Court will not interfere with such decision. Hence, the second submission of Mr. Pandya that the penalty is highly disproportionate to the guilt is rejected.

10. The last submission of Mr. Pandya was that the act of producing forged import licence could be at the most said to be mistake on the part of the petitioner-firm. He had gone to the extent of submitting that even assuming for the sake of

argument that it was a deliberate action on the part of the petitioner-firm in producing fake and fabricated import licence, then also, such a harsh order of penalty could not have been passed. On the face of it, it clearly appears that it was a deliberate action on the part of the petitioner and it was not a mistake. When a person applies for the tender by producing fake and fabricated import licence with a deliberate intention, then such a person should be strictly dealt with by the authorities so that it may set an example to others also. Under the circumstances, the third submission of Mr. Pandya is also rejected.

11. Before parting with, we must state that the learned Counsel Shri Pandya has relied on the following Supreme Court judgments:

(i)**Om Kumar & others v. Union of India (AIR 200 SC 3689)** on the principle of Wednesbury unreasonableness.

(ii)**Erusian Equipment and Chemicals Ltd.**

vs. State of West Bengal and another (AIR 1975 SC 266) on the point of serious civil consequences on blacklisting of the petitioner-firm.

(iii)**S.N.Mukherjee vs. Union of India (AIR 1990 SC 1984)** for exercising jurisdiction of this Court under Article 226 on the ground that the impugned order at Annexure 'A' was not a speaking order.

12. None of the aforesaid judgments of the Honourable Apex Court is applicable to the facts of this case, which we have referred hereinabove in detail. Therefore, we have refrained ourselves from dealing with the same in detail. However, we may reiterate that principles of Wednesbury unreasonableness will not be applicable in the instant case. Exercise of jurisdiction under Article 226 by this Court in favour of the petitioner does not arise as though the order is a brief one, gives solid and cogent reasons.

13. Lastly, we may say that the judgment of the

Honourable Supreme Court in Erusian Equipment's case (Supra) will have no aplication , rather in the said case, Honourable Supreme Court has clearly held in paragraph 14 that no one has a fundamental right. It is true that the impugned order will be slur on the petitioner-firm, but the petitioner has to thank itself for its own mistake. In any case, it cannot be said to be instrument of coercion. Except the aforesaid submissions, no other submission was made. We do not find any substance in any of the submissions made by Mr. Pandya for the petitioner. Therefore, this petition is summarily dismissed.

(B.J.Shethna,J.)

(M.D.Shah,J.)

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